

DETAILED ACTION

1. New Examiner of Record. Kristie L. Brooks, Art Unit 1616.
2. The final rejection sent out on January, 24, 2008 is hereby vacated and a new non-final rejection is presented below.

Status of Claims

3. Claims 2-16, 18-43 and 56 are pending.
4. Claims 21-25 and 28-29 are withdrawn from further consideration as being drawn to the non-elected species requirement.
5. Receipt and consideration of Applicants remarks filed on May 27, 2008 is acknowledged.
6. Rejections not reiterated from the previous Office Action are hereby withdrawn. The following rejections are either reiterated or newly applied. They constitute the complete set of rejections presently being applied to the instant application.

Claim Objections

7. Claim18 is objected to because of the following informalities: improper Markush formatting.

Claim 18 recites "...a natural or synthetic substrate at least partially coated with a layer of at least one metal, said at least one metal comprising Ag, Au, Cu, Al, Zn, Ni, Ni, Mo, or Cr, or mixture, or allow thereof."

The Examiner suggest placing the claim in proper Markush formatting i.e., ---

...said at least one metal selected from the group consisting of Ag, Au, Cu, Al, Zn, Ni, Ni, Mo, Cr and mixtures or alloy thereof.---, for example. (see MPEP 803.02)

Appropriate correction is required.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 2-16, 18-20, 26-27, 30-43 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grimm et al. (US 2002/0064509) in view of Christie et al. (US 6,325,847).

Applicant claims a goniochromatic/light reflecting cosmetic lip makeup composition, comprising (a) at least one goniochromatic coloring agent suited for

creating a goniochromatic colored background and (b) an amount of light reflective particles suited for creating highlight points that are visible to the naked eye, wherein said reflective particles comprise particles of a natural or synthetic substrate at least partially coated with a layer of at least one metal, said at least one metal comprising Ag, Au, Cu, Al, Zn, Ni, Mo or Cr, or mixture or alloy thereof, formulated into (c) a topically applicable, physiologically acceptable medium therefor.

Determination of the scope and content of the prior art
(MPEP 2141.01)

Grimm et al. teach a cosmetic makeup composition for use in lipsticks, lip glosses, foundations, eyeliners, etc., comprising at least one goniochromatic pigment and at least one lipophilic continuous phase (see the abstract and pp 1 paragraphs 1 and 4). The goniochromatic pigment may have an interferential multilayer structure, such as $\text{Fe}_2\text{O}_3/\text{SiO}_2/\text{FeO}_3/\text{SiO}_2/\text{Fe}_2\text{O}_3$ (see page 1 paragraphs 8-11). The goniochromatic pigment may be present in the composition in the amount of 0.01 to about 50% by weight (see page 2 paragraph 14). The composition may contain at least one pigment other than the at least one goniochromatic pigment, such as, inorganic or organic particles, lakes, pearlescent and interferential pigments that may be provided in form of a substrate or core with an applied coating (see page 3 paragraphs 27 and 29). The at least one pigment other than the at least one goniochromatic pigment may be present in an amount of up to 5% by weight (see page 3 paragraph 32). The

composition may contain at least one fatty substance such as hydrocarbon oils, vegetable oils, silicon oils, etc. (see page 3 paragraph 21). The composition may be in the form of an anhydrous composition, oil-in-water emulsion, water-in-oil emulsion, etc. (see page 2 paragraph 17).

Ascertainment of the difference between the prior art and the claims

(MPEP 2141.02)

Grimm et al. teach cosmetic makeup composition comprising goniochromatic pigments, a lipophilic continuous phase and additional pigments but do not teach specifically light reflective particles at least partly coated with a layer of at least one metal. This deficiency is cured by the teachings of Christie et al.

Christie et al. teach precious metal color effect material (CEM) comprising a platelet covered substrate coated with a highly reflective first layer to light, a second layer encapsulating the first layer and a selectively transparent third layer (see the abstract, column 1 lines 65-67 and column 2 lines 1-9). The substrate can be glass flack, mica, titanium dioxide coated with mica, etc (see column 2 lines 18-21). The highly reflective first layer can be precious metals, such as, silver, gold, etc (see column 2 lines 22-25). However, silver is preferred when employed as a reflective layer because it can maximize chromaticity of the reflected colors of the CEM (see column 2 lines 32-36). The degree of reflectivity for the first and third layer is 50-100% (see column 2 lines 9-14). The particle size of the platelet-shaped particles is about 5-250 μ m

(see column 3 lines 1-5). The amount of pigment used can range from 1-30% depending on the specific type composition (see column 5 lines 29-53). The pigments are useful in cosmetics (see column 2 lines 64-67, and column 5 lines 1-2 and 29-53).

Finding of prima facie obviousness

Rational and Motivation (MPEP 2142-2143)

One of ordinary skill in the art would have been motivated to incorporate light reflective particles at least partly coated with a layer of at least one metal into cosmetic makeup composition taught by Grimm et al. because Grimm et al. suggest the cosmetic makeup composition can contain additional pigments, including substrates with an applied coating.

Although Grimm et al. do not teach light reflective particles at least partly coated with a layer of at least one metal, it is well known in the art to coat glass particles with light reflective layers of metal, such as, silver and incorporate them into cosmetic formulations as suggested by Christie.

Thus, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to incorporate metal coated glass particles taught by Christie et al. into the cosmetic makeup compositions taught by Grimm et al. because it is an obvious variation of coated substrates that can be used in the formulations.

Therefore, the claimed invention would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made because the prior art is fairly suggestive of the claimed invention.

Conclusion

10. No claims are allowed.
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristie L. Brooks whose telephone number is (571) 272-9072. The examiner can normally be reached on M-F 8:30am-6:00pm Est..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann R. Richter can be reached on (571) 272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Johann R. Richter/
Supervisory Patent Examiner, Art Unit 1616